

2006 SIXTH CIRCUIT JUDICIAL CONFERENCE

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SUPREME COURT UPDATE

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I. Federalism and sovereign immunity

A. Congressional power

Gonzales v. Raich, 125 S.Ct. 2195 (2005). The federal Controlled Substances Act does not exceed the scope of Congress's authority under the commerce clause when it is applied to marijuana grown within a state for personal medicinal use or distribution without charge.

Gonzales v. Oregon, 126 S.Ct. 904 (2006). The federal government may not prevent implementation of Oregon's Death with Dignity Act by suspending prescription writing authority of doctors participating under the program.

*Rapanos v. United States*, 376 F.3d 629 (6<sup>th</sup> Cir. 2005), *cert. granted*, 126 S.Ct. 414 (2006). Does the Clean Water Act extend to nonnavigable waters that are adjacent to and ultimately feed into tributaries that run into

navigable waters? If the Clean Water Act applies, is this within the scope of Congress's commerce power?

## B. Sovereign immunity

United States v. Georgia, 126 S.Ct. 877 (2006). State governments may be sued pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. §12131, which prohibits state and local governments from discriminating against people with disabilities in government programs, services, and activities, for violating constitutional right of prisoner to be free from cruel and unusual punishment.

Central Virginia Community College v. Katz, 126 S.Ct. 990 (2006). Sovereign immunity does not apply in Bankruptcy Court proceedings. Congress may constitutionally authorize suits against state governments in Bankruptcy Court proceedings.

## C. Dormant commerce clause

*Cuno v. DaimlerChrysler*, 386 F.3d 7381 (6th Cir. 2004), *cert. granted*, 126 S.Ct. 36 (2005). Does a state-provided investment tax credit against state corporate franchise tax, available equally to in-state and out-of-state businesses that expand within state, discriminate against interstate commerce and violate the dormant commerce clause?

## II. Criminal cases

### A. Fourth Amendment

Georgia v. Randolph, 126 S.Ct. 1515 (2006). The occupant of a dwelling may not give the police consent to search the common areas of the premises if the other occupant is present at the front door and objects to the search.

*Hudson v. Michigan*, 639 N.W.2d 255 (Mich. 2001), *cert. granted*, 125 S.Ct. 2964 (2005). When police enter a residence after knocking but before waiting a reasonable time before entering, must the evidence be suppressed as violating the Fourth Amendment?

*Samson v. California*, unpub. op. (Cal. Ct. App. 2005), *cert. granted*, 126 S.Ct. 34 (2005). May parolees be searched without any suspicion of criminal wrong-doing?

#### B. Effective assistance of counsel

Rompilla v. Beard, 125 S.Ct. 2456 (2005). The failure of the defense to read the files from defendant's prior conviction and to investigate possible abuse and mental retardation of defendant was ineffective assistance of counsel and state court was unreasonable in rejecting this conclusion.

#### C. Confrontation Clause

*Davis v. Washington*, 111 P.3d 844 (Wash. 2004), *cert. granted*, 126 S.Ct. 552 (2005). Does the admission of statements to a 911 operator as non-testimonial excited utterance violate the Confrontation Clause of the Sixth Amendment?

*Hammon v. Indiana*, 829 N.E.2d 444 (Ind. 2005), *cert. granted*, 126 S.Ct. 552 (2005). Are excited utterance statements made to a police officer barred as testimonial under *Crawford v. Washington*?

#### D. Habeas corpus

*House v. Bell*, 386 F.3d 668 (6<sup>th</sup> Cir. 2004), *cert. granted*, 125 S.Ct. 2991 (2005). What is sufficient for an inmate to demonstrate a probability of actual innocence so as to be able to raise a defaulted claim?

Day v. McDonough, 126 S.Ct. \_\_\_\_ (April 25, 2006). A district court has the authority, but is not required, to dismiss sua sponte an untimely petition despite the state's erroneous concession of timeliness.

### III. First Amendment

#### A. Speech

Rumsfeld v. Forum for Academic and Institutional Rights, 126 S.Ct. 1297 (2006). The Solomon Amendment, 10 U.S.C. §1983(b), which requires law schools to allow military recruiters equal access to campus facilities or have their universities face loss of all federal funds, does not violate the First Amendment.

*Randall v. Sorrell*, 382 F.3d 91 (2nd Cir. 2005), *cert. granted*, 126 S.Ct. 35 (September 27, 2005). Does a Vermont state law limiting campaign contributions violate the First Amendment right to free speech and free association?

*Garcetti v. Ceballos*. 361 F.3d 1168 (9<sup>th</sup> Cir. 2004), *cert. granted*, 125 S.Ct. 1395 (2005). Is a public employee's speech, which is a matter of public concern, entitled to First Amendment protection when the speech is part of the employee's job?

*Beard v. Banks*, 399 F.3d 134 (3d Cir. 2005), *cert. granted*, 126 S.Ct. 650 (2005). Does it violate the First Amendment for a state to prohibit some inmates from having all access to newspapers and magazines?

#### B. Religion

McCreary County, Ky. v. ACLU of Ky., 125 S.Ct. 2722 (2005). The posting of the Ten Commandments in government buildings for the purpose of advancing religion violates the Establishment Clause.

Van Orden v. Perry, 125 S.Ct. 2854 (2005). A six feet high, three feet wide Ten Commandments monument between the Texas State Capitol and the Texas Supreme Court does not violate the Establishment Clause.

Gonzales v. O Centro Espirata Benificiente Unido do Vegetal, 126 S.Ct. 1211 (2006). Under the Religious Freedom Restoration Act, government lacks a compelling interest in preventing a small religion from using an hallucinogenic controlled substance.

### IV. Property claims

Kelo v. City of New London, 125 S.Ct. 2655 (2005). It is "public use" within the

meaning of the takings clause when a private corporation uses the government's eminent domain power for public use.

## V. Fundamental rights

### A. Abortion rights

Ayotte v. Planned Parenthood, 126 S.Ct. 961 (2006). Case remanded for consideration of possible narrowing interpretation of a statute requiring parental notification for abortion for unmarried minors facially unconstitutional that does not have an exception for the health of the girl?.

### B. Voting rights

*League of United Latin American Citizens v. Perry*, 298 F.Supp.2d 451 (E.D. Tex. 2004). Does redistricting that is motivated primarily by partisan considerations violate the First and Fourteenth Amendments? Does mid-decade redistricting done for partisan purposes violate the Constitution? Is this a non-justiciable political question?

### C. Duty to provide protection

Town of Castle Rock, Colorado v. Gonzales, 125 S.Ct. 2796 (2005). A restraining order written in mandatory language, in light of a statutory duty to provide protection, is insufficient to create a property interest requiring protection under the due process clause.

## VI. Civil liberties and the war on terrorism

*Hamdan v. Rumsfeld*, 415 F.3d 33 (D.C. Cir. 2005), *cert. granted*, 126 S.Ct. 622 (2005). Does the President's order for military tribunals violate treaties or the Constitution? Does a recently enacted federal law limiting habeas corpus petitions by Guantanamo detainees apply retroactively?